



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-255-FOR; OSM-2012-0004]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We are announcing receipt of a proposed amendment to the Kentucky Regulatory Program (hereinafter, the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On January 30, 2012, Kentucky submitted to OSM a proposed Kentucky Administrative Regulations (KAR) that authorizes electronic notification of enforcement documents.

DATES: We will accept written comments until 4:00 p.m., e.s.t., [Insert date 30 days

after date of publication in the Federal Register]. If requested, we will hold a public hearing on [Insert date 25 days after date of publication in the Federal Register]. We will accept requests to speak until 4:00 p.m., e.s.t., on [Insert date 15 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by “Docket Number OSM-2012-0004” by either of the following two methods:

Federal eRulemaking Portal: www.regulations.gov. The proposed rule has been assigned Docket ID: OSM-2012-0004. If you would like to submit comments through the Federal eRulemaking Portal, go to www.regulations.gov and follow the instructions; or

Mail/Hand Delivery/Courier:

Joseph L. Blackburn, Field Office Director

Lexington Field Office

Office of Surface Mining Reclamation and Enforcement

2675 Regency Road

Lexington, Kentucky 40503

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the SUPPLEMENTARY INFORMATION section in this document.

Docket: In addition to obtaining copies of documents at www.regulations.gov, you may also obtain information at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

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SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, Federal Register (47 FR 21434). You can also find later actions concerning Kentucky’s program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

On January 30, 2012, Kentucky submitted a proposed program amendment containing

administrative regulations regarding electronic notification of enforcement documents. These proposed changes are intended to be cost saving measures that are as effective, but not more stringent than those required under SMCRA and the Federal regulations. The substantial changes to the administrative regulations were in the service section, Section 5, for both administrative regulations. Also, the Legislative Research Commission suggested changes that are not intended to change the meaning of the administrative regulations but rather clarify content or are made to make the regulation comply with KRS 13A drafting requirements.

Below is a summary of Kentucky's proposed changes. The full text of the amendment is available for you to read at the locations listed above under ADDRESSES or at www.regulations.gov.

1. 405 KAR 7:091 General Practice Provisions

Section 4(1)(a), (b), (2)(b), and Section 6 (3) offer the option of using electronic mail to submit documents. Although there are no specific Federal requirements governing electronic mail, the general Federal counterparts to these proposed revisions are in sections 518 and 525 of SMCRA, in 30 CFR Part 845, and in 43 CFR 4.1100, 4.1200, and 4.1300.

In addition, the last sentence of 405 KAR 7:091, Section 2(1)(a), General Provisions for Conducting Administrative Hearings, is revised by adding the phrase "that is not the result of a lack of diligence on the part of the corporate party or its counsel." As

amended, the entire sentence states that: “The failure of a corporate party to appear by counsel, without good cause that is not the result of a lack of diligence on the part of the corporate party or its counsel shall be grounds for default.” The Federal counterpart to this provision is in 43 CFR 1.3.

2. 405 KAR 12:020 Enforcement

Section 5(2)(a)4, (3), (3)(a), (3)(b), and (3)(c) offer the option of using electronic mail to submit documents. Although there are no specific Federal requirements governing electronic mail, the general Federal counterparts to these proposed revisions are in sections 521 and 525 of SMCRA, in 30 CFR Part 843, and in 43 CFR 4.1100, 4.1200 and 4.1300.

In addition, 405 KAR 12:020. Section 2(5), is modified by adding the phrase “including correction of errors, changes in responsible parties, changes to remedial measures, and changes in abatement dates.” As amended, Section 2(5) states that “[a]n authorized representative of the cabinet may, by written notice, modify an order for remedial measures for good cause including correction of errors, changes in responsible parties, changes to remedial measures, and changes in abatement dates.” While this provision has no specific Federal counterpart, the general Federal counterparts are in section 521 of SMCRA and in 30 CFR 843.12.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the Kentucky program now satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the Kentucky program.

Written or Electronic Comments

If you submit written comments they should be specific and confined to issues pertinent to the proposed regulations and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent state or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (see DATES) or at locations other than those listed above (see ADDRESSES) will be included and considered in the docket for this rulemaking.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review; we cannot guarantee that we will be able to do so. We

will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the Federal Register]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, that if possible, each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public

meeting rather than a public hearing. If you wish to meet with us to discuss this amendment, please request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under ADDRESSES. We will include a written summary of each meeting as part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,

Regional Director Appalachian Region

March 26, 2012

Date

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